

Norman C. Kleinberg
Theodore V. H. Mayer
William J. Beausoleil
HUGHES HUBBARD & REED LLP
One Battery Park Plaza
New York, New York 10004-1482
(212) 837-6000

Paul F. Strain
M. King Hill, III
David J. Heubeck
VENABLE LLP
Two Hopkins Plaza, Suite 1800
Baltimore, Maryland 21201
(410) 244-7400

Attorneys for Defendant Merck & Co., Inc.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE: FOSAMAX PRODUCTS)	
LIABILITY LITIGATION)	
_____)	MDL NO. 1789
<i>This document relates to:</i>)	1:06-md-1789 (JFK)
Jennifer Bogard and Robert Bogard)	
v. Merck & Co., Inc.)	
Case No: 1:07-cv-03295-JFK)	
_____)	

DECLARATION OF THEODORE V. H. MAYER

THEODORE V. H. MAYER declares as follows:

1. I am an attorney admitted to practice before this Court and a partner at Hughes Hubbard & Reed LLP, attorneys for Defendant Merck & Co., Inc. ("Merck"). I am familiar with the facts set forth herein. I make this declaration based on my own personal knowledge and the business records of the Firm.

2. I make this declaration in support of the Motion of Defendant Merck & Co., Inc. to Dismiss with Prejudice for Failure to Provide Plaintiff Profile Form.

3. A true and correct copy of the letter from counsel for Merck to Plaintiff's counsel, dated April 26, 2007 is attached hereto as Exhibit 1.

4. A true and correct copy of the email from Plaintiff's counsel to counsel for Merck, dated June 22, 2007 is attached hereto as Exhibit 2.

5. A true and correct copy of the letter from counsel for Merck to Plaintiff's counsel, dated July 10, 2007 is attached hereto as Exhibit 3.

6. A true and correct copy of the letter from counsel for Merck to Plaintiff's counsel, dated August 13, 2007 is attached hereto as Exhibit 4.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

/s/
Theodore V. H. Mayer

Executed this
5th day of September, 2007

EXHIBIT 1

VENABLE[®]
LLP

Two Hopkins Plaza, Suite 1800
Baltimore, Maryland 21201-2978

Telephone 410-244-7400
Facsimile 410-244-7742

www.venable.com

Christina L. Gaarder

(410) 244-7638

clgaarder@venable.com

April 26, 2007

Via E-Mail and US Mail

Nancy Hersh
Mark E. Burton, Jr.
Rachal Abrams
Hersh & Hersh
2080 Opera Plaza
601 Van Ness Avenue
San Francisco, CA 94102-6388

nhersh@hershlaw.com
mburton@hershlaw.com

Re: In re Fosamax Products Liability Litigation (MDL-1789)
Case Management Orders 3 and 8, Plaintiff Profile Form, and Authorizations
Jennifer Bogard (07-CV-03295)

Dear Counsel:

Enclosed are copies of Case Management Orders 3 and 8 signed by Judge Keenan on 11/1/06 and 12/18/06, respectively, and a Plaintiff Profile Form that is applicable to all of your cases currently pending in the MDL-1789, *In re Fosamax Products Liability Litigation*. Also included as exhibits to the Plaintiff Profile Form (PPF) are the following Authorizations: a HIPAA compliant Authorization for Release of Medical and/or Dental Records (PPF Ex. A); a Department of Veterans Affairs Request For and Authorization to Release Medical Records or Health Information (PPF Ex. B); an Authorization for Release of Mental Health Records (PPF Ex. C); a Social Security Administration Consent for Release of Information, an Authorization for Release of Disability Insurance Records, and an Authorization for Release of Workers' Compensation Records (PPF Ex. D); a Request for Copy of Tax Return and an Authorization for Release of Department of Revenue Records (PPF Ex. E); a Request for Social Security Earnings Information (PPF Ex. F); an Authorization for Release of Employment Records (PPF Ex. G); a Request Pertaining to Military Records (PPF Ex. H); and an Authorization for Release of Health Insurance Records (PPF Ex. I). Please provide complete and accurate responses for the plaintiff in the above-referenced case, along with all completed authorizations. Your response is due on **June 25, 2007**.



April 26, 2007
Page 2

Please serve the completed Plaintiff Profile Form and all attachments, including the original signed Declarations and Records Authorizations, upon Christina L. Gaarder, Counsel for Merck, at the address shown above. In addition, please serve copies of the completed Plaintiff Profile Form and all attachments upon defense counsel of record.

If you have questions regarding this letter or its content, please contact Donna Bitzelberger, Plaintiff Profile Form Coordinator, by telephone at (410) 494-6287, or by e-mail at dcbitzelberger@venable.com.

Very truly yours,

/s/ Christina L. Gaarder

Christina L. Gaarder

CLG:mdg
Enclosures

cc: Plaintiff Executive Committee (by US Mail)

EXHIBIT 2

Chason, Erin K.

From: Bitzelberger, Donna
Sent: Monday, June 25, 2007 11:33 AM
To: 'lowellf@phillipslaw.ws'
Cc: Gaarder, Christina L.; Stroup, Tina G.
Subject: Bogard v. Merck

Mr. Finson,

Mr. Doran forwarded your message to us. Venable is handling the collection of the PPFs. A two week extension is fine for Ms. Bogard's PPF.

Thanks.

Donna C. Bitzelberger
Paralegal
Venable LLP
210 Allegheny Avenue
Towson, Maryland 21204
(410) 494-6287
FAX (410) 821-0147
dcbitzelberger@venable.com

From: Lowell Finson at Phillips and Associates <lowellf@phillipslaw.ws>
To: Jim Doran; brandyt@phillipslaw.ws <brandyt@phillipslaw.ws>; Lowell Finson at Phillips and Associates <lowellf@phillipslaw.ws>; Karen Finson at Phillips & Associates <karenf@phillipslaw.ws>
Sent: Fri Jun 22 19:05:35 2007
Subject: Bogard v. Merck

Mr. Doran:

I have just rec'd this file from Rachel Abrams at Hersh & Hersh who filed the case originally. I will enter an appearance on Monday. It appears the PPF is due Monday and while it is close to being finished, it is not yet done to my satisfaction. I do not want to invite a deficiency notice, so I am requesting an additional two weeks to have it in your hands. If this is a problem, let me know. Otherwise, I will assume you will allow this brief extension. Thank you.

Lowell Finson

Phillips & Associates

3030 N. Third St., Suite 1100

Phoenix, AZ 85012

office: 602-258-8900 ext. 295

fax: 602-288-1632

email: lowellf@phillipslaw.ws <<mailto:lowellf@phillipslaw.ws>>

EXHIBIT 3

VENABLE^{*}
LLP

Two Hopkins Plaza, Suite 1800
Baltimore, Maryland 21201-2978

Telephone 410-244-7400
Facsimile 410-244-7742

www.venable.com

Christina L. Gaarder

(410) 244-7638

clgaarder@venable.com

July 10, 2007

Via E-Mail

Nancy Hersh
Mark E. Burton, Jr.
Rachel Abrams
Hersh & Hersh
2080 Opera Plaza
601 Van Ness Avenue
San Francisco, CA 94102-6388

nhersh@hershlaw.com
mburton@hershlaw.com

Re: In re Fosamax Products Liability Litigation (MDL-1789)
Plaintiff Profile Forms and Authorizations
Bogard, Jennifer

Dear Counsel:

As of today, we have not received the Plaintiff Profile Form in the above-referenced case. Please provide it immediately or advise that the Plaintiff has decided not to submit a form and will be dismissing the action.

Thank you for your prompt attention to this matter.

Very truly yours,

/s/ Christina L. Gaarder

Christina L. Gaarder

CLG:ekc

EXHIBIT 4



Two Hopkins Plaza, Suite 1800
Baltimore, Maryland 21201-2978

Telephone 410-244-7400
Facsimile 410-244-7742

www.venable.com

Christina L. Gaarder

(410) 244-7638

clgaarder@venable.com

August 13, 2007

Via E-Mail

Nancy Hersh
Mark E. Burton, Jr.
Rachel Abrams
Hersh & Hersh
2080 Opera Plaza
601 Van Ness Avenue
San Francisco, CA 94102-6388

nhersh@hershlaw.com
mburton@hershlaw.com

Re: In re Fosamax Products Liability Litigation (MDL-1789)
Plaintiff Profile Forms and Authorizations
Bogard, Jennifer

Dear Counsel:

On July 10, 2007, I wrote to advise that we had not received a Plaintiff Profile Form for your client, and requested that you provide a completed form within 30-days, as required by CMO 3. It has been well over the 30 day time period which also included an agreed upon two-week extension. This is to advise that unless within 15 days of today's date we receive an accurate and fully completed PPF for Ms. Bogard, Merck shall move to dismiss this case on the basis of your client's failure to comply with the Court's Order in this regard.

Thank you for your prompt attention to this matter.

Very truly yours,

/s/ Christina L. Gaarder

Christina L. Gaarder

CLG:ekc